

A Public Hearing was held April 13, 2006 at 7:30 p.m. at the Marilla Community Center, 1810 Two Rod Road, Marilla, New York. The purpose of the meeting was to get public opinion on the adoption of proposed "Local Law No. 1 of the Year 2006". The proposed Local Law will amend the Zoning Law of the Town of Marilla to create a new B-1 Restricted Business District and rezone a parcel of land to that new classification. The B-1 Restricted Zoning District will be a rectangularly shaped district located at the southwesterly corner of the intersection of Clinton Street and Two Rod Road and will extend 1500 feet westerly along Clinton Street from such intersection and approximately 1135 feet southerly along Two Rod Road from such intersection but except from the B-1 Restricted Business District a rectangular parcel of land located on the westerly side of Two Rod Road starting 475 feet south of the centerline of Clinton Street extending 345 feet southerly from that point with a depth of approximately 300 feet from the centerline of Two Rod Road, which excluded portion presently contains two existing residential building lots with houses. The Town Clerk published the notice of the public hearing in the Alden Advertiser, the Elma Review and East Aurora Advertiser as well as posting it on the Official Bulletin Board pursuant to the provisions of the Town Law. Officials present were:

John R. Foss, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
George Gertz, Councilman  
Absent: Warren Handley, Councilman

Approximately (75) persons were in attendance. Supervisor Foss clarified some statements that were in a letter mailed out by Councilman Handley that may have confused some residents and asked if there was any interested person who desired to be heard.

#### **Residents with questions and opinions:**

*Chuck Schilling* - feels this would set a precedence for future requests.

*Shirley Limpinsel* - asked if we could have an unbiased group do a study and she is not in favor of empty buildings or over development.

*Joe Gerardi* - asked what would guarantee that someone like Benderson's would not be able to develop there?

*Marcy Schilling* - she is against senior housing or any business, she feels this would bring in more traffic at an already busy intersection.

*Marcia Cannetti* - she feels this is unfair to residents that moved away from the city to live in the country and wonders why the Town Board is going to bat for someone who lives in Oregon?

*Ron Eiseman* - asked how much faster could this be built up with the re-zoning?

*Joanne Basset* - she doesn't understand why the Town just doesn't do anything and wait to see what happens to this area.

*Kathy Cichocki* - wants to know where the Town Board stands and is this a pre-done deal?

*Charles O'Brian* - asked if there would be a referendum vote on this issue?

*Renee Flannery* - she moved here to raise her children in the country and is against this.

*Shirley Limpinsel* - stated that at the last board meeting she wanted it clarified that she was not against the high end homes and golf course but was against the homes being placed in the agricultural area and not in the RR area. She did not want a precedent set and Marilla to become a Lancaster.

*Donna Guest* - is concerned about the traffic and safety issues.

*Marcia Canetti* - feels this land is quality farm land and may become extremely valuable in the future.

*Mary Nette Foss* - stated she is a life long resident and was on the Town Board in 1980 when the Master Plan was done and it included the business area in the northwest quadrant of the Town. The Town needs businesses to help with the tax base.

*Gene Limpinsel* - thinks there are too many golf courses in our area already and some of them are having financial trouble, maybe its better for Mr. Berner that it didn't go through.

*Joe Zimmerman* - feels he has no trouble paying his taxes and would like to keep it rural. He is also in favor of a referendum vote.

*Charles O'Brian* - asked where all of the studies are from the golf course?

*Shirley Limpinsel* - asked if the Town Board will be doing the studies that Mr. Handley suggested? She feels an impact study should be done.

*Judy Gillman* – she received Councilman Handley's letter and asked if it's a double standard that he is against this type of business yet he has a business on Bullis Road and one in his home?

*Bob Lemke* – asked for a recap on the issue, he asked what the lot size requirements for business and residential are?

*Everett Hoffman* – feels that because there have not been any new roads in Town, taxes should not be a real issue.

*Renee Flannery* – she did not feel the number of houses that could go in now would greatly affect the taxes.

*Marcia Schilling* – she feels there are empty plazas everywhere and how would residents benefit from an empty plaza.

*Tom* – asked the Town Board to allow the residents to vote tonight?

*Shirley Limpinsel* - she wants to see the positives and negatives of an impact study and wants it on the record.

*Gloria Specht* – she stated that everyone is assuming that this property is sold and business scheduled to move in there, it's not for sale yet and no one has bought it, someone may want it just as an investment.

*Charles O'Brian* – asked if you rezone this property, what stops someone down the road asking for the same thing?

*Helen Bourgeois* – asked why not just allow a couple of stores on the five acres, and what would the access road be for the 35 acres area?

*John Boyle* – is the real estate broker selling the property, he said the residential building lots will sell before the business lots.

*Marcia Canetti* – she feels if this Town Board goes to bat for this property, she can't see any other lawyer not being able to do the same thing.

*Ellen Kern* – asked why does this family want to change the zoning to B-1? She is looking down the road 10 to 20 years and doesn't want added traffic or undesired business.

*Bob Jagord* – is a real estate broker and an appraiser, he said the B-1 would bring more value to the property. If you put 12 homes at an assessment of approximately \$150,000, this would total 1.7 million in added assessment, where a business on a 35 acre parcel would bring anywhere from 2-3 million in assessment and would not affect your school taxes. He feels it's a good idea to have business at that corner.

*Chuck Schilling* – he has long term concerns, Transit Road was very similar 20 years ago and what stops Clinton Street from being the next Transit Road.

*Jake Argauer* - he feels Two Rod and Clinton Street is the proper place for business, Leon Berner's nursery has more cars going in and out of there today then it would have with the golf course.

*Dick Foss* – he feels some people are making a poor assumption that there are 5 acres zoned business, yet no business is in there, so if we make an additional 30 acres it will not fill in quickly with businesses to reduce our taxes.

*Don Zuzze* - could the Town do economic studies to what affect this would have on the existing local businesses?

*Renee Flannery* – asked the Town Board to consider the residents opinion.

*Joanne Basset* – asked if this is zoned B-1 will the Town Board have a say as to what type of business can go in there?

*Ron Eiseman* – if this is rezoned B-1 can the Rohl's sell additional residential lots?

*Mary Earsing* – questioned some of the text in the local law?

*Sue Schabert* – asked if it might be financially better for the Rohl's to sell the lots slowly?

*Chuck Schilling* – feels the Town Board has done a great job in the past and he requests this Town Board to maintain what they have done in the past.

*Shirley Limpinsel* – asked if there are any B-1 properties in existence? She wants it on record that she would like an impact study done.

Supervisor Foss responded to all of the above questions.

Hearing no further comment the hearing was closed at 8:58 p.m.

A Regular Meeting of the Marilla Town Board was held April 13, 2006 at 9:00 p.m. at the Marilla Community Center, 1810 Two Rod Road, Marilla, New York.

Officials present were:

John R. Foss, Supervisor  
Barbara Spanitz, Councilman  
Fred Specht, Councilman  
George Gertz, Councilman

Absent: Warren Handley, Councilman

Supervisor Foss called the meeting to order and the Pledge of Allegiance to the Flag was given. There was a moment of silence in memory of former Councilman and life long resident Jack Reichert and former Supervisor and long time resident Jim Handy.

### **Communications**

- a. The Aurora Women's Recreation League is requesting use of the softball field at the Marilla Town Park on Monday and Wednesday evenings for the months of June, July and August.

### **Committee Reports**

Highway Superintendent Dave Pierce reported that the roads have been swept and the salt is off them. He also stated that we hopefully have a two year supply of firewood for the Civil War Encampment, thankfully a resident donated the wood to the town, we just had to pick it up and cut it.

Councilman Spanitz reported that the Planning Board will meet next Thursday at 7:00 p.m. at the Marilla Town Hall.

Councilman Gertz reported that Code Publishers reorganization of the Code Book should be completed for review by late May. He will also be hosting a NIMS Training class for Federal Disaster, the entire Town Board has to take this class which will affect our Federal funding.

Councilman Specht reported that the request for payment for the Fire Service Program has been submitted, the total cost this year is \$13,699. We changed investors a couple years ago from Paine Webber to Standard Security and had some problems in the beginning but this year the report was easy to read and the fund is doing well. He also wanted to thank Dave Pierce for taking care of the firewood for the Civil War Re-enactors.

Supervisor Foss reported that the Town bid out its annual BAN and the rate received from Chase Bank was 3.74% on the amount of 1.7 million. This is a very good rate as the Fed discount is now 4.75% and we are receiving approximately 4.5% on our surplus funds. We have reduced our debt in the Town in the General Fund, Highway, and Sanitation Fund to only \$210,000 and in 3 years it will be reduced to only an occasional borrowing for Sanitation and Highway equipment. Currently we are receiving about 4.5% on our surplus funds so it doesn't pay to pay them off at this time.

He met Connie Minor, a grant writer to assist him in writing PACE grants. A new round of PACE grants will be coming out in April and He wants Connie to review the last grant we did that did not get to Albany in time due to Post Office problems. We fully plan to apply again for the Grant and will take the application that didn't arrive in time and try and improve it so we have a better chance in this new round.

Last month he received a lot of criticism, especially from the owners of the Kolbe property, Len Janiga and Earl Gingerich Jr., for withdrawing his support for putting the property in the PACE Program. He strongly disagrees with some of theirs and Mr. Handley's statements as to what happened. First he did not call Mr. Gingerich, Mr. Gingerich called him with the proposal and his evaluation of the quality of the land. He did do the paperwork which is a letter of intent very similar to many real estate deals as the first step in purchasing the development rights. A price was negotiated that was acceptable to both the Board and the owners. The problem came when Councilman Specht reviewed the wetlands map and found approximately 40% to 50% of the land is in

the State and Federal wetlands and it cuts across the entire property. Supervisor Foss took the time to walk the property and discovered the property to be entirely different from what Mr. Gingerich had described. The land had not been cultivated for over 20 years and does not in any way qualify for PACE consideration. He seriously doubts that it will ever qualify with the amount of wetlands and some of the steep grades on the front part of the property. Councilman Handley said that he went back on his word when we opted out of the agreement. He couldn't disagree more. He represents the taxpayers of Marilla and when he determined the information Mr. Gingerich and Mr. Janiga gave him was not truly representative of the property it voids any prior agreement. He doesn't believe the Town Board should commit \$72,000 of taxpayers money for this project as it does not meet the requirements and would be a waste of taxpayers money and not a justified expenditure.

He stated that this past week the DEC reviewed the property as Mr. Gingerich and Mr. Janiga, owners of the property had done a lot of work with dozers and excavators and the Officer reported they had committed some of the most serious violations he had seen in his 17 years of working for the DEC. This is the second time they have committed serious violations of wetland law and it is fortunate some Town Board Members opted out of the agreement for putting that land in the PACE program. The Town of Marilla should not be a part of the violations of wetland law on their property.

### **Open Board Presentations From the Public**

None

### **Old Business**

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the minutes from the Public Meeting and Regular Board Meeting held on 3/9/06 Motion Carried.

### **New Business**

Motion Councilman Gertz moved, seconded by Councilman Spanitz to appoint Supervisor Foss as the NEST ( North East Solid Waste Group) Representative. Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Specht to approve a resolution recognizing the week of April 30<sup>th</sup> through May 6<sup>th</sup> as Municipal Clerks Week. Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Gertz to authorize Town Officials to attend Southern Tier Conference on May 18<sup>th</sup> at a cost of \$30 per person. Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Gertz to authorize the donation of \$250 to the Alden Rescue for the retrieval of two snow mobiles from the Marilla Town Park Pond. Motion Carried.

Motion: Councilman Specht moved, seconded by Councilman Spanitz to approve the Aurora Women's Recreational League use of the Marilla Town Park softball field on Monday and Wednesday evenings for the months of June, July and August. Motion Carried.

Motion: Councilman Gertz moved, seconded by Councilman Specht to approve Independent Health as the health carrier representative from 5/1/06-4/30/07 for participating Marilla Town Employees. Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Specht to approve the following resolution pertaining to partial tax payments:

WHEREAS, the Erie County Legislature unanimously approved a request for Home Rule Legislation from New York State that allows municipalities to accept partial payment in any amount for the payment of property taxes; and

WHEREAS, the New York State Legislature has adopted the

appropriate legislation approving their request and the Erie County Legislature has adopted the necessary home rule approval so that acceptance of such partial payments may now be permitted; and

WHEREAS, the Town Board of the Town of Marilla believes that it is in the best interest of the Town of Marilla and its taxpayers to accept such partial payments.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board of the Town of Marilla hereby authorizes acceptance of partial payments in any amount pursuant to the afore mentioned legislation.
2. This resolution shall be effective immediately.

The above resolution was duly put to a roll call vote at a regular meeting of the Town Board held on April 13, 2006, the results of which were as follows:

Roll Call Vote:

Councilman Spanitz – Aye

Councilman Specht – Aye

Councilman Gertz- Aye

Supervisor Foss – Aye

Motion Carried.

Motion: Councilman Gertz moved, seconded by Councilman Specht to declare the 1986 garbage truck and leach packer as surplus equipment. Motion Carried.

Motion: Councilman Gertz moved, seconded by Councilman Specht to authorize the Town Clerk to advertise for bid the drainage project on Winchester Drive upon attainment of signatures for easements. Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Gertz to set the date for the Public Hearing on Local Law No. 1 for year 2006 for May 11<sup>th</sup> at 7:30 p.m. at the Marilla Town Hall, the law is entitled “Creation of a B-1 Restricted Business District” the purpose of the law is to allow for additional businesses to locate within the Town of Marilla but provide some limitations and safeguards as to the size and types of businesses permitted.

Roll Call Vote:

Councilman Specht – Aye

Councilman Spanitz – Aye

Councilman Gertz – Aye

Supervisor Foss – Aye

Motion Carried.

### **Report of Town Officials**

Town Engineer Marie Nowak stated that they had received the final determination from Rural Development pertaining to Water District 5. The Grant has increased but so have the costs and as it stands it is about \$1,073 per household. They are going to apply for some alternative funding through Albany to try and bring the cost down.

Building Inspector John Fronczek submitted a written report with 4 building application received with fees totaling \$225, 4 building permits issued with a total value of \$32,850, 7 inspections were made and 2 complaints were received for the month of March 2006. One Special Use Permit for a Flag Lot totaling \$100 was received. A total of 130 official code enforcement activities were performed in the month of March.

Exemptions are due by May 1<sup>st</sup> to the Assessors Office.

The Planning Board’s next meeting will be April 20<sup>th</sup> at 7:00 p.m. and minutes have been received and posted.

The Conservation Advisory minutes have been received and posted.

Councilman Gertz reported for the Fire Company that there was a serious accident on Four Rod Road and Bullis Road.

Town Historian Hubert Kutter stated that he is happy to be back and thanked everyone for their cards. The Historical Society will be hosting a Civil War Impressionists on April 25<sup>th</sup>. He thanked Dave Pierce and his men for repainting the shutters at the Marilla Library.

**Open Board Presentations**

Resident and Planning Board Member Dan Handy thanked the Marilla Fire Company for the two trips to the hospital for his father, Jim Handy who passed away, and he thanked Hubert for the helpful information.

Councilman Specht wanted to clarify that he felt bad about not having the Golf Course. Houses would have been going into an (A) area. Leon Berner has an RR area that he can put in 68 houses without being stopped. He felt it was a good trade giving up some of an (A) area for spreading the houses through out the Golf Course. Now the area will be getting another 24 houses along with the 68 in the RR area.

Supervisor Foss stated that the Baptist Church had their annual Venison dinner and had a huge turnout of 587 people. The Historical Society has had standing room only turnouts for their programs and the Library was packed for their open house and our own local author, Linda Patterson had a book signing during the open house. This is a compliment to our Town.

Motion: Councilman Specht moved, seconded by Councilman Gertz to approve the claims as follows:

General Fund Claims, Vouchers 108-166	\$ 33,456.80
Highway Fund Claims, Vouchers 54-75	\$ 11,347.99
Special Districts	
Sanitation (SR), Vouchers 32-46	\$ 12,475.99
Special Fire Voucher 2	\$ 13,669.31
Water District #2, Vouchers 7-9	\$ 5,099.39
Water District #3 Voucher 3-4	\$ 2,706.80
Water District #4 Voucher 3-4	\$ 1,634.80
Community Develop. PACE 3-4	\$ 1,447.78
Community Develop. HUD	\$ .00

Motion Carried.

Motion: Councilman Spanitz moved, seconded by Councilman Gertz to adjourn the meeting at 9:30 p.m. Motion Carried.

Respectfully submitted,

\_\_\_\_\_Town Clerk

\_\_\_\_\_Supervisor

\_\_\_\_\_Councilman

\_\_\_\_\_Councilman

\_\_\_\_\_Councilman

\_\_\_\_\_Councilman